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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,352	08/19/2003	Derek Metcalf	38949/282196	3810
23370	7590	07/03/2006		
JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309			EXAMINER NOVOSAD, JENNIFER ELEANORE	
			ART UNIT 3634	PAPER NUMBER

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/643,352

Applicant(s)

METCALF, DEREK

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2006 and 11 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20,22,23 and 25 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 and 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13,22,23 and 25 is/are rejected.
- 7) ☒ Claim(s) 14-16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>05/30/06</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

This final Office action is in response to (a) the amendment filed March 10, 2006 by which claims 13 and 14 were amended and claims 21-25 were added, and (b) the amendment filed May 11, 2006 by which claims 12 and 24 were canceled.

It is noted that the amendment filed May 11, 2006 was in response to the Notice of Non-Compliant amendment mailed on April 26, 2006.

Election/Restriction

Claims 1-12 and 17-20 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim.

Accordingly, claims 13-16, 22, 23, and 25 have been examined on the merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The use of the phrase "may be" in line 4 of claim 22 renders the claim indefinite since what "may be" to one "may not be" to another. *Thus*, the metes and bounds of the claim cannot

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be properly ascertained since one would not know whether the recitation proceeding the phrase "may be" is being positively required or not.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over West '321 in view of U.S. Patent No. 5,641,083 (Metcalf '083).

West '321 discloses an adjustable shelf assembly comprising a central shelf unit (right side of Figure 1) comprising a top surface, a front edge, a rear edge, a first side edge and a second side edge; a first extension shelf unit (shown in Figure 3) slidably arranged with respect to the central shelf unit such that the width of the assembly may be increased by extending and decreased by retracting the first extension unit with respect to the central shelf unit; the first extension shelf unit (see Figure 3) having a support surface, a front edge (rear of Figure 3), a rear edge (front of Figure 3), a proximate side (right of Figure 3, near 164) and a distal side (left side of Figure 3, near 174) which is located distal to the central unit; and *with respect to claim 22*, an attachment member (see Figure 11A) is secured to a portion of the central unit and is attached to a support structure such that the central shelf unit *may be* extended without having to reposition the attachment member with respect to the support structure, i.e., since the attachment member is attached by screws, nails, etc. to a wall, it is considered to not be repositioned.

The claims differ from West '321 in requiring a front member secured to the front edge of the central unit having an upper lip and a lower lip wherein the upper and lower lips are formed into channels and a flexible member is inserted therein.

Metcalf '083 teaches the use of a front member (44) having upper and lower lips. It is known to be old in the art to have a paper-type, i.e., considered to be flexible, sheet or card having pertinent information about the merchandise being stored which is placed between such lips.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have placed a front member, as taught by Metcalf, on the front edge of the assembly of West '321 for ease in use to the consumer since pertinent information can be displayed thereon.

Claims 13, 22, 23, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,109,462 (Emalfarb et al. '462) in view of U.S. Patent No. 5,769,247 (Merl '247).

Emalfarb et al. '462 disclose an adjustable shelf assembly (see Figure 10) comprising a central shelf unit (middle side of Figure 10, and including 124) comprising a top surface, a front edge, a rear edge, a first side edge and a second side edge; a first extension shelf unit (right side of Figure 10 - at 126) slidably arranged with respect to the central shelf unit such that the width of the assembly may be increased by extending and decreased by retracting the first extension unit with respect to the central shelf unit; the first extension shelf unit having a support surface, a front edge, a rear edge, a proximate side and a distal side which is located distal to the central unit; *with respect to claim 22*, an attachment member (114) is secured to a portion of the central

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unit and is attached to a support structure such that the central shelf unit *may be* extended without having to reposition the attachment member with respect to the support structure; *with respect to claim 23*, a second extension unit (left side of Figure 10 - at 122) is slidably arranged with respect to the central shelf unit; and *with respect to claim 25*, the central shelf unit does not move relative to the first and second shelf units during extension or retraction.

The claims differ from Emalfarb et al. '462 in requiring a front member secured to the front edge of the central unit having an upper lip and a lower lip wherein the upper and lower lips are formed into channels and a flexible member is inserted therein.

Merl '247 teaches the use of a front member (100) having upper and lower lips. It is known to be old in the art to have a paper-type, i.e., considered to be flexible, sheet or card having pertinent information about the merchandise being stored which is placed between such lips.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have placed a front member, as taught by Merl, on the front edge of the assembly of Emalfarb et al. '462 for ease in use to the consumer since pertinent information can be displayed thereon.

Allowable Subject Matter

Claims 14-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claim 13 have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendment changing "permitting the insertion..." to --and wherein a-- in claim 13 (see second to last line), i.e., applicant is now claiming the combination with the flexible member.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

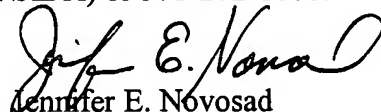
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

June 23, 2006